

01  
02  
03  
04  
05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 JUAN HERNANDEZ-JIMENEZ, ) CASE NO. C08-0678-JLR-MAT  
08 )  
08 Petitioner, )  
09 )  
09 v. ) REPORT AND RECOMMENDATION  
10 )  
10 A. NEIL CLARK, )  
11 )  
11 Respondent. )  
12 \_\_\_\_\_ )

13 I. INTRODUCTION AND SUMMARY CONCLUSION

14 Petitioner Juan Hernandez-Jimenez is a native and citizen of Mexico, who is currently  
15 detained by the U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest Detention  
16 Center in Tacoma, Washington. On April 30, 2008, petitioner, proceeding pro se, filed the instant  
17 Petition for Writ of Habeas Corpus pursuant 28 U.S.C. § 2241, arguing that his detention is  
18 unreasonable and indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed.  
19 2d 653 (2001), because he is unable to afford the \$7,500 bond amount imposed by the  
20 Immigration Judge. (Dkt. 6). Petitioner requests that the Court lower his bond amount to \$1,500.  
21 Respondent has moved to dismiss, arguing that petitioner’s detention is not indefinite. (Dkt. 10).

22 Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition

(Dkt. 6) be DENIED, and respondent's motion to dismiss (Dkt. 10) be GRANTED.

## II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner Juan Hernandez-Jimenez is a native and citizen of Mexico who entered the United States without inspection in 1986. (Dkt. 12 at L214). On November 13, 2007, he was convicted in the Circuit Court of the State of Oregon for the County of Deschutes of felony coercion. (Dkt. 12 at R58-62). After serving his twelve day sentence, petitioner was arrested by ICE and served with a Notice to Appear, charging him with removability from the United States under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), for being present in the United States without being admitted or paroled. (Dkt. 12 at L36-37). ICE determined that petitioner should remain detained without bond. (Dkt. 12 at L35). Petitioner requested and received a bond redetermination hearing in December 2007 before an Immigration Judge ("IJ"), who granted petitioner bond in the amount of \$7,500. (Dkt. 12 at L22).

On March 25, 2008, an IJ denied petitioner's applications for cancellation of removal and voluntary departure, and ordered him removed to Mexico. (Dkt. 12 at L201-14). Petitioner filed an appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"), which affirmed the IJ's decision and dismissed the appeal on June 23, 2008. (Dkt. 12 at L216-21).

On April 30, 2008, while his appeal was still pending with the BIA, petitioner filed the instant habeas petition, requesting that the Court lower his bond amount from \$7,500 to \$1,500. (Dkt. 6). In addition, on June 2, 2008, petitioner filed a Motion for Reduction of Bond or Change in Conditions of Release with the Immigration Court. (Dkt. 12 at L240-44). On June 4, 2008, an IJ ordered that bond remain at \$7,500. (Dkt. 10 at 3).

///

01 III. DISCUSSION

02 Petitioner argues that because he is unable to afford the \$7,500 bond imposed by the  
03 Immigration Judge, the amount is unreasonable, and requests that this Court reduce the bond  
04 amount to “a reasonable and affordable bond of \$1,500.” (Dkt. 6). However, the Ninth Circuit  
05 has just recently held that a petitioner’s challenge to the reasonableness of a bond determination  
06 is not subject to judicial review. *See Prieto-Romero*, \_\_\_ F.3d \_\_\_, 2008 WL 2853396, \*10 (9th  
07 Cir. July 25, 2008). *Prieto-Romero*, like petitioner here, complained that the IJ had set an  
08 excessively high bond amount which prevented his release from detention. The Ninth Circuit  
09 found that the Court had no authority to reach the merits of his claim under INA § 236(e), 8  
10 U.S.C. § 1226(e), which provides:

11 The Attorney General’s discretionary judgment regarding the application of this  
12 section shall not be subject to review. No court may set aside any action or decision  
13 by the Attorney General under section regarding the detention or release of any alien  
14 or the grant, revocation, or denial of bond or parole.

14 Therefore, as the Ninth Circuit has determined, the Attorney General’s decision to set petitioner’s  
15 bond in the amount of \$7,500 is a discretionary judgment that is not reviewable by this Court. *See*  
16 *id.*

17 Petitioner further claims that because he is financially unable to pay the \$7,500 bond  
18 amount imposed by the Immigration Judge, his detention is indefinite under *Zadvydas v. Davis*,  
19 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). (Dkt. 6). In *Zadvydas v. Davis*, 533  
20 U.S. 678, 121 S. Ct. 2491, 2505, 150 L. Ed. 2d 653 (2001), the Supreme Court considered  
21 whether the post-removal-period statute, INA § 241(a)(6), 8 U.S.C. § 1231(a)(6), authorizes the  
22 Attorney General “to detain a removable alien *indefinitely* beyond the removal period or only for

01 a period *reasonably necessary* to secure the alien’s removal.” *Zadvydas*, 533 U.S. at 682. The  
02 petitioners in *Zadvydas* could not be removed because no country would accept them. Thus,  
03 removal was “no longer practically attainable,” and the period of detention at issue was  
04 “indefinite” and “potentially permanent.” *Id.* at 690-91. The Supreme Court held that INA §  
05 241(a)(6), which permits detention of removable aliens beyond the 90-day removal period, does  
06 not permit “indefinite detention.” *Id.* at 689-697. The Court concluded that after a presumptively  
07 reasonable six-month period of post-removal-period detention, an alien is eligible for conditional  
08 release upon demonstrating “good reason to believe that there is no significant likelihood of  
09 removal in the reasonably foreseeable future.” *Id.* at 701.

10 Here, however, as respondent argues, the *Zadvydas* rule is inapplicable because petitioner  
11 “remains *capable* of being removed – even if it has not yet finally been determined that he *should*  
12 *be* removed.” See *Prieto-Romero*, 2008 WL at \*8. Once petitioner’s legal proceedings have been  
13 completed, ICE will remove or release petitioner. Thus, “he is not stuck in a ‘removable-but-  
14 unremovable limbo,’ as the petitioners in *Zadvydas* were,” and his detention is not indefinite. See  
15 *Prieto-Romero*, 2008 WL at \*7.

16 Petitioner also relies on the Ninth Circuit’s decision in *Doan v. INS*, 311 F.3d 1160, 1162  
17 (9th Cir. 2002). In *Doan*, the petitioner had been ordered removed to Vietnam, but Vietnam  
18 refused to accept him. Thus, in accordance with *Zadvydas*, the former Immigration and  
19 Naturalization Service<sup>1</sup> (“INS”) released Doan on \$10,000 bond because Doan’s removal was no

---

21 <sup>1</sup> On March 1, 2003, the Immigration and Naturalization Service (“INS”) was dissolved  
22 as an independent agency within the Department of Justice and its functions were transferred to  
the Department of Homeland Security (“DHS”). Homeland Security Act of 2002, Pub. L. No.  
107-296, § 471, 116 Stat. 2135, 2205.

01 longer reasonably foreseeable in light of Vietnam's refusal. Doan posted bond and was released,  
02 but challenged the imposition of the bond. The Ninth Circuit found that, "the imposition of a bond  
03 as a condition of release was within the exercise of discretion contemplated under the statute and  
04 implicitly ratified by the Supreme Court's decision in *Zadvydas*." *Doan*, 311 F.3d at 1161. The  
05 court suggested that, in certain circumstances, "serious question may arise concerning the  
06 reasonableness of the amount of bond if it has the effect of preventing an alien's release."  
07 However, the court never reached the issue of whether the \$10,000 bond amount was reasonable  
08 because Doan's family had posted the bond.

09 Here again, unlike *Doan*, petitioner has not shown that his removal is not reasonably  
10 foreseeable. Once his legal proceedings have been completed, ICE will remove petitioner to  
11 Mexico or release him. "Because [petitioner's] detention does not run afoul of the implicit  
12 statutory limitation announced in *Zadvydas*, he remains lawfully detained . . . and *Doan* does not  
13 license us to review the reasonableness of the amount of bond, even if [petitioner] cannot afford  
14 to post it." *Prieto-Romero*, 2008 WL at \*10. Accordingly, petitioner's detention is not indefinite,  
15 and the Court has no authority to review or reduce the IJ's bond amount.

#### 16 IV. CONCLUSION

17 For the foregoing reasons, I recommend that petitioner's habeas petition be DENIED, and  
18 that respondent's motion to dismiss be GRANTED. A proposed Order accompanies this Report  
19 and Recommendation.

20 DATED this 22nd day of August, 2008.

21   
22 Mary Alice Theiler  
United States Magistrate Judge